

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2385 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MUNICIPAL CORPN

Versus

CENTRAL BANK OF INDIA

Appearance:

MR SI NANAVATI for Petitioner

MR AKSHAY H MEHTA for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 03/08/96

ORAL JUDGEMENT

Ahmedabad Municipal Corporation had preferred this petition under article 226 of the Constitution of India challenging the order passed by the Court of Small Causes, Ahmedabad in M.V. Appeal No. 1451/84 on 12.10.82. Central Bank of India-the respondent herein- a nationalized bank has taken the area of 35.65 sq.mtrs.

on the ground floor of the building constructed by the Harijan Ashram Trust at a monthly rent of Rs. 601/- Said premises are situated in ward No.B bearing FP No. 521/47/1/1. The petitioner municipal corporation had fixed its Gross Ratable Value (GRV) at Rs/11,198/- for the year 1983-84. Against the fixation of the said GRV, respondent had preferred an appeal in the Court of Small Causes at Ahmedabad and the learned Judge, Court no.2 of Court of Small Causes at Ahmedabad has fixed the GRV at Rs. 1080/- by holding that monthly rent of the said premises would be of Rs. 90/-.

2. Feeling aggrieved by the said decision the petitioner has come before this court.

3. If the order of the learned Judge of the Court of Small Causes is considered then it would be quite clear that the learned Judge of the Court of Small Causes has not at all taken into consideration as on what basis GRV of Rs. 11,198/- was fixed by the petitioner Corporation. It must be mentioned that the learned Judge was acting as an Appellate Authority and therefore, it was necessary for him to initially consider the original order and then to mention and find out what were the mistakes committed by the original authority in passing the said order. In the instant case, it was necessary for the learned Judge of the Court of Small Causes to find out as to what was the principle followed by the corporation in fixing the said GRV and whether the principles followed were proper or not. Without considering the said aspect the learned Judge has straight way fixed the GRV. If the provisions of section 21 A(Y) of the BPMS Act are taken into consideration, then it would be clear that though the premises in question are rented out to the respondent tenant has agreed to pay up the amount of rent. Therefore, the amount agreed between the parties could be the basis for fixing the GRV of the property. As per the proviso of the said section as it was in force prior to the amendment of the said section on 18.1.84, the municipal corporation has to assess as to what was the annual amount of standard rent of the said premises and on the basis of the same annual letting value GRV was fixed. From the record it is not possible to know as to whether the amount of Rs. 11,198/ was fixed on that basis or not. It is also not clear as to whether the respondent was heard along with the landlord before fixing the GRV. Therefore, in the circumstances fixation of GRV by the learned Judge could not be accepted. The present case is covered by the decision of this Court in the case of Municipal Corporation of Ahmedabad City vs. Oriental Fire and General Insurance Co. 1994(2) GLR

1662. Said case is applicable on all fours to the case before me. In that case also the GRV was fixed by the Municipal Corporation at Rs. 30,400/- and the Court of Small Causes had fixed the GRV at Rs. 8,760/- by calculating the rate of rent per sq. mtr. In the present case the learned Judge fixed the rent at Rs. 2.50 per sq.mtr. and on the basis of the same for 36 sq. mtrs. he has fixed the monthly rent of Rs. 90/and on the basis of the same he has worked out the GRV at Rs. 1080/-. The Division Bench of this Court, disapproved the said method followed by the Court of Small Causes and had remanded the matter to the Court of Small Causes to fix the GRV in the light of the principles laid down by the Supreme Court in the case reported in AIR 1985 SC 339 Dr. Balbir Singh vs. MCD which are based on a decision of the Supreme Court reported in AIR 1980 SC 541 in the case Devan Dault Rai Kapoor vs. New Delhi Municipal Corporation Committee. In the circumstances I have to remit the matter to the corporation for reassessing and fixing the GRV after issuing notice to the present respondent as well as the landlord and giving them opportunity of being heard at the time of fixing of the said GRV by bearing in mind the principles laid down in the above two Supreme Court decisions.

4. In the circumstances, I allow this petition and set aside the Judgment and Order passed by the learned Judge of the Court of Small Causes, Ahmedabad and remit the matter to the municipal authorities for fixing the GRV in view of the principles laid down by the Supreme Court in the above said two decisions, in respect of the premises in question after issuing notices to the respondent as well as the landlord and giving opportunity of hearing to them. Rule is made absolute. No order as to costs.

(S.D.Pandit.J)